

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Section 63.71 Application of CenturyLink)	WC Docket No. ____
For Authority Pursuant to Section 214 of)	
The Communications Act of 1934, As)	
Amended, to Discontinue the Provision of)	
Certain Packet-Based And Wavelength)	
Business Services as Common Carriage)	
Services and to Instead Offer Those)	
Services as Private Carriage Services)	

**DECLARATION OF THERESA SMETHERS
IN SUPPORT OF APPLICATION**

Dated: August 17, 2020

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**DECLARATION OF THERESA SMETHERS
IN SUPPORT OF APPLICATION**

I. QUALIFICATIONS AND BACKGROUND

1. My name is Theresa Smethers. I am a Senior Product Manager at CenturyLink. In this position, I manage CenturyLink's Switched Ethernet Services for its wholesale sales channel. I have been employed by CenturyLink and its predecessor companies for 29 years. Prior to my current position, I held product management positions related to CenturyLink's TDM, SONET, and Switched and Dedicated Ethernet services.

II. PURPOSE AND SUMMARY

2. In this declaration, I describe the services covered by CenturyLink's Application and why granting it will benefit competition and consumers. In short, the services subject to the Application are packet-based and wavelength services offered to sophisticated customers, including business, government, and educational institution entities. The marketplace for these services is intensely competitive and includes, among others, cable companies, CLECs, ILECs, resellers, and systems integrators. Virtually every customer opportunity is contested, typically by multiple facilities-based providers. However, CenturyLink's services are subject to different

regulatory requirements than many of its competitors' services, which impedes CenturyLink's ability to respond effectively to competitive offers, thus harming competition and consumers.

3. Specifically, I understand that the Commission has formally acknowledged that many of the packet-based services offered by cable companies, two ILECs, and one CLEC are "private carriage" services.¹ By contrast, CenturyLink's packet-based and wavelength services have historically been considered "common carriage."² This regulatory asymmetry gives cable companies and other entities a significant and entirely arbitrary competitive advantage. Private carriage competitors are permitted to tailor their offerings to the individualized needs of each customer, and CenturyLink's private carriage competitors are increasingly competing in this way. CenturyLink, by contrast, is constrained in its ability to tailor its offers to the individualized needs of customers because CenturyLink's services are treated as common carrier services. Consequently, CenturyLink often cannot respond to its competitors' offers as aggressively as it would like because of its common carrier obligations. In addition, unlike its private carriage competitors, CenturyLink spends time and money evaluating the implications of common carriage requirements when assessing how best to respond to the tailored and individualized offerings of its private carriage competitors. For all these reasons, granting private carriage status for the services included in the Application will enable CenturyLink to compete more effectively against its private carriage rivals.

¹ See CenturyLink Statement in Support of Application, at 9-10 (citing *Business Data Services in an Internet Protocol Environment*, Report and Order, 32 FCC Rcd. 3459, ¶¶ 267-85 (2017) ("BDS Order"), remanded in part, *Citizens Telecomms. Co. of Minn. v. FCC*, 901 F.3d 991 (8th Cir. 2008), mandate stayed (Order, 8th Cir., November 9, 2018)).

² I understand that the regulatory classification of the CenturyLink packet-based and wavelength services at issue here is not absolutely clear because these services have never been formally classified as "common carriage." However, I also understand that regulators and others have historically assumed that CenturyLink's packet-based and wavelength services are subject to "common carriage" regulation. CenturyLink has thus complied with the common carriage requirements for these services.

4. The remainder of this declaration is organized as follows. In Section III, I describe the specific packet-based and wavelength services that CenturyLink is seeking to offer as private carriage, and I identify the corresponding services offered by a number of CenturyLink's competitors.³ In Section IV, I describe the harms to CenturyLink, competition, and consumers caused by the current regulatory asymmetry, and why granting CenturyLink's application will address those harms.

III. THE SERVICES COVERED BY CENTURYLINK'S APPLICATION

5. CenturyLink's Application seeks to formally classify the following packet-based and wavelength business services as private carriage.

A. Switched Ethernet Services

6. Switched Ethernet Services are switched services purchased by business, government, and educational institution customers to connect multiple locations using Ethernet protocol in speeds up to 100 Gbps. These services connect each customer location to an Ethernet switch in a CenturyLink office, and CenturyLink's network manages the routing of traffic to and from the connected locations. Switched Ethernet Services are provisioned over mostly fiber facilities and are available within and outside CenturyLink's ILEC footprint.⁴ CenturyLink offers Switched Ethernet Services to wholesale and retail customers of all sizes. To order Switched Ethernet Services, customers generally must contact a CenturyLink sales representative, or

³ Although I understand that CenturyLink must technically apply to "discontinue" these services to reclassify them as private carriage, CenturyLink does not plan to actually "discontinue" any service. CenturyLink plans to continue offering these services and to honor all existing contracts.

⁴ Within CenturyLink's ILEC service territory these services are called Ethernet Virtual Private Line, Metro Ethernet, and Metro Optical Ethernet. Outside that territory, these services are offered as E-Services (E-Access (EPL, EVPL) and E-Line (EPL, EVPL)), Extended Native Local Area Network, Elite Native Local Area Network, and Virtual Private Network. In this declaration, I collectively refer to these services as "Switched Ethernet Services."

already have a previously negotiated “growth” contract in place for future circuits. Although CenturyLink publishes standard rates, terms, and conditions for some Switched Ethernet Services in its service publications,⁵ most customers negotiate individualized rates and terms that reflect their unique circumstances. CenturyLink’s Switched Ethernet Services compete with numerous analogous services offered by other providers.⁶

B. Dedicated Ethernet Services

7. Dedicated Ethernet Services are used by business, government, and educational institutions to connect multiple locations with dedicated fiber facilities. They are typically used by customers for local or long-distance data transport. They are available within and outside CenturyLink’s ILEC footprint in bandwidths up to 100 Gbps.⁷ To order service, customers generally must contact a CenturyLink sales representative. Although CenturyLink publishes standard rates, terms, and conditions in its interstate service guides for some of these Dedicated Ethernet Services,⁸ most customers negotiate individualized rates and terms. CenturyLink’s Dedicated Ethernet Services compete with numerous analogous services offered by other providers.⁹

⁵ See Exhibit A, hereto (links to the online description of these services).

⁶ See Exhibit B, hereto (listing a sample of the products offered by CenturyLink’s competitors that compete directly with CenturyLink’s Switched Ethernet services).

⁷ Within CenturyLink’s ILEC service territory, these services are called Ethernet Transport, Ethernet over SONET, and Ethernet Private Line. Outside that territory they are offered as Ethernet Private Line, Intercity and Metro E-Line, and E-Line.

⁸ See Exhibit A, hereto (links to the online description of these services).

⁹ See Exhibit B, hereto (listing a sample of the products offered by CenturyLink’s competitors that compete directly with CenturyLink’s Dedicated Ethernet services).

C. Wavelength Services

8. Wavelength Services are dedicated services used by business, government, and educational institutions. They are a fully managed private network solution provided over fiber facilities offering high levels of availability, reliability, and security. They are available in bandwidths up to 100 Gbps.¹⁰ To order service customers generally must contact a CenturyLink sales representative and negotiate customized rates and terms. Wavelength customers typically are larger business or wholesale customers that require CenturyLink's most reliable data networking connectivity. Customers include large banks and financial institutions, retailers, pharmaceutical companies, defense contractors, data center providers, government agencies, and wholesale service providers.¹¹ CenturyLink's Wavelength services compete with numerous analogous services offered by other providers.¹²

IV. GRANTING THE APPLICATION WILL ENABLE CENTURYLINK TO COMPETE MORE EFFECTIVELY, BENEFITING COMPETITION AND CONSUMERS

9. Granting the Application will enable CenturyLink to respond more effectively to competitive offerings, which will further enhance competition for packet-based and wavelength business services.

10. CenturyLink offers all of the services subject to this Application in a highly competitive marketplace, where cable companies are among the fastest growing competitors. Virtually every customer opportunity is contested, typically by multiple facilities-based providers. The FCC recently stated that "competition" for packet-based services is "sufficient

¹⁰ Within CenturyLink's ILEC service territory, these services are called Optical Wavelength and GeoMax. Outside that territory they are offered as Optical Wavelength and Wavelength.

¹¹ See Exhibit A, hereto (link to the online description of these services).

¹² See Exhibit B, hereto (listing a sample of the products offered by CenturyLink's competitors that compete directly with CenturyLink's wavelength services).

enough to discipline pricing.”¹³ And Vertical Systems (an analyst firm that tracks competition among providers for Ethernet services) has found that “[p]rice compression, particularly for high speed services, continues to limit Ethernet revenue growth and that, in 2019, “Comcast had the highest year-over-year market share growth” across the largest Ethernet providers.¹⁴

11. Notwithstanding this highly competitive marketplace, CenturyLink’s services are subject to more regulation than those of most of its competitors. Although the Commission has not formally designated CenturyLink’s packet-based and wavelength services as either “private carriage” or “common carriage,” I understand that the Commission has generally assumed that CenturyLink’s packet-based and wavelength services are “common carriage,” and that is how CenturyLink has treated them. By contrast, the Commission has formally acknowledged that the analogous services offered by larger cable companies and certain other competitors, including AT&T, are “private carriage” services.¹⁵ This regulatory asymmetry allows CenturyLink’s competitors to make offers to customers that CenturyLink cannot match.

12. Specifically, CenturyLink’s private carriage competitors – especially cable companies – are increasingly targeting individual customers or specific groups of customers with offerings that are specifically tailored to their individualized needs. CenturyLink would like to meet or beat many of these competitive offers. However, because CenturyLink treats its

¹³ *BDS Order* ¶ 83.

¹⁴ 2019 U.S. Carrier Ethernet Leaderboard, Vertical Systems (Feb. 2020), <https://www.verticalsystems.com/2020/02/20/2019-us-ethernet-leaderboard/>.

¹⁵ See, e.g., *BDS Order*, ¶¶ 267-285 (formally classifying packet-based business services offered by cable companies and certain ILECs and CLECs as private carriage services); *Comments Invited on Section 214 Application(s) to Discontinue Domestic Non-Dominant Carrier Telecommunications Services Provided on a Common Carriage Basis and Reclassify Those Services as Private Carriage Services*, WC Docket No. 19-323, Public Notice, DA 19-1216, 34 FCC Rcd 11069 (Nov. 27, 2019) (noting that AT&T’s application would be deemed granted automatically on December 28, 2019 unless the Commission notified AT&T that its grant would not be automatically effective).

packet-based and wavelength services as “common carriage,” I understand that CenturyLink often lacks the regulatory flexibility to do so in the same manner.

13. For example, cable companies have been successful in winning small business customers from CenturyLink by offering promotions that are tailored to each customer’s (or group of customers’) individualized needs. CenturyLink would like to respond to these competitive offers. However, as a “common carrier” of these services, CenturyLink is somewhat constrained in its ability to make similarly tailored offers. Thus, although CenturyLink often could meet or beat its rivals’ offers for packet-based and wavelength services, its common carrier obligations sometimes prevent it from doing so. The issue is not limited to pricing, but rather sometimes includes one-off terms and conditions.

14. The artificial and arbitrary differences in the regulatory classifications for CenturyLink’s packet-based and wavelength services and its competitors’ analogous services can limit CenturyLink’s ability to respond to competitive offerings, causing CenturyLink to lose customers and reducing CenturyLink’s competitive impact in the marketplace.

15. It is also important to note that CenturyLink, as a common carrier, incurs additional burdens that are not borne by its private carriage competitors. When CenturyLink considers its response to a competitor’s individualized offer, CenturyLink must expend substantial time and resources evaluating the extent to which its response must be curtailed due to its common carriage obligations. This additional cost places CenturyLink at a further disadvantage relative to its private carriage competitors, and this additional time makes CenturyLink a less nimble competitor.

V. CONCLUSION

16. For all the reasons set forth above, granting CenturyLink's Application will benefit competition and consumers.

VERIFICATION

I hereby swear under penalty of perjury that, based on the best information available to me, the foregoing is true and correct.

/s/ Theresa Smethers

Theresa Smethers

Dated: August 17, 2020

EXHIBIT A

**DESCRIPTIONS OF PACKET-BASED AND
WAVELENGTH SERVICES SUBJECT TO APPLICATION**

Services	CenturyLink Entity Providing	Representative Website Reference
Switched Ethernet	CTL ILEC Affiliates	<p>Ethernet Virtual Private Line (ISG No. 1, § 7.12) https://www.centurylink.com/tariffs/fcc_cloc_acc_isg_no_1.pdf</p> <p>Metro Ethernet https://www.centurylink.com/business/networking/ethernet.html</p> <p>Metro Optical Ethernet (ISG No. 11, § 8.8) https://www.centurylink.com/tariffs/fcc_cloc_acc_isg_no_11_part2.pdf</p>
	CTL CLEC Affiliates	<p>E-Services: E-Access (EPL, EVPL), E-Line (EPL, EVPL) https://www.centurylink.com/asset/wholesale/site/data-sheet/wholesale-ethernet-data-sheet.pdf https://www.centurylink.com/business/networking/ethernet.html#e-line</p> <p>Extended Native Local Area Network* Elite Native Local Area Network* Enterprise Switched Native Local Area Network*</p> <p>Virtual Private Network https://www.centurylink.com/business/networking/mpls-ipvpn.html</p>
Dedicated Ethernet	CTL ILEC Affiliates	<p>Ethernet Transport (ISG No. 1, § 7.11) https://www.centurylink.com/tariffs/fcc_cloc_acc_isg_no_1.pdf</p> <p>Ethernet over SONET (ISG No. 11, § 7.19.2) https://www.centurylink.com/tariffs/fcc_cloc_acc_isg_no_11_part1.pdf</p>

	CTL CLEC Affiliates	<p>Ethernet Private Line https://www.centurylink.com/wholesale/site/networking/ethernet.html https://www.centurylink.com/tariffs/fcc clc ixc rss no 10.pdf (ISG No. 10, § 7.E.5)</p> <p>Intercity and Metro E-Line https://www.centurylink.com/wholesale/site/networking/ethernet.html https://www.centurylink.com/asset/business/enterprise/solution-brief/en-ethernet-fs-ethernetmatrix-ss180015.pdf</p> <p>E-Line (ISG No. 10, § 7.E.4) https://www.centurylink.com/tariffs/fcc clc ixc rss no 10.pdf</p>
Wavelength	<p>CTL ILEC Affiliates</p> <p>CTL CLEC Affiliates</p>	<p>Optical Wavelength (ISG No. 11, § 7.20) http://www.centurylink.com/tariffs/fcc cloc acc isg no 11 part1.pdf</p> <p>Geomax (ISG No. 11, § 7.18) http://www.centurylink.com/tariffs/fcc cloc acc isg no 11 part1.pdf</p> <p>Wavelength https://www.centurylink.com/wholesale/site/networking/wavelength.html</p> <p>Optical Wavelength https://www.centurylink.com/wholesale/site/networking/wavelength.html</p>

* CenturyLink no longer proactively sells these services

EXHIBIT B

**SAMPLE OF SERVICES OFFERED BY OTHER PROVIDERS
THAT COMPETE DIRECTLY AGAINST THE CENTURYLINK SERVICES SUBJECT TO THE APPLICATION**

CenturyLink	AT&T	Verizon	Comcast	Cox	Charter	Windstream	XO
Switched Ethernet Services	ASE	Switched E-LAN, Switched E-Line	Ethernet Network Svc., Metro Ethernet, EVPL	E-LAN (MP2MP), EVPL (Hub-Spoke)	EPLAN, VPL	Switched Ethernet	Ethernet Hub Service, Ethernet VPLS
Dedicated Ethernet Services	ADE	Dedicated E-Line	EPL	Dedicated EPL (ICB only)	Wavelength Services	Wave Service	Ethernet Private Line
Wavelength Services	EPLS-WAN, VPN	Dedicated E-Line, Wavelength Services	EPL	Dedicated EPL (ICB only)	Wavelength Services	Wave Service	Wavelength